



## DEPARTMENT OF FORESTRY AND FIRE PROTECTION

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TO: ALL REGISTERED PROFESSIONAL FORESTERS

FROM:

WILLIAM E. SNYDER  
DEPUTY DIRECTOR  
RESOURCE MANAGEMENT

SUBJECT: FOREST PRACTICE RULES FOR EMERGENCY NOTICE TIMBER  
OPERATIONS PROBLEMS RELATED TO PROVIDING NOTICE TO  
NATIVE AMERICANS

The large numbers of Emergency Notices that were filed with the Department of Forestry and Fire Protection (CAL FIRE) as a result of the June 2008 lightning caused wildfires raised concerns among some of California's Native American communities regarding potential for damage to cultural resources and notification procedures. One concern Native Americans raised is that the emergency notification process does not afford sufficient time to provide an effective response. The other concern relates to inconsistencies in the type of information contained in Emergency Notices (RM-67 or RM-65 forms) being sent to Native Americans. The purpose of this letter is to bring these concerns to your attention and request your assistance in addressing these points.

By way of background, the decision in the EPIC vs. Johnson lawsuit in 1985 found in favor of the plaintiffs on five key issues; one of these pertained to inadequate Native American noticing. The court ruled that CAL FIRE's failure to send notification of the plan to the Native American Heritage Commission (NAHC) was an error that constituted prejudicial abuse of discretion. This decision was precedent setting and has become case law. Since the decision, CAL FIRE and the Board of Forestry and Fire Protection (Board) have worked cooperatively with the NAHC to develop effective and efficient Native American notification/review procedures. The overall intent of this process is to ensure that significant archaeological and historical sites are adequately identified and protected. Two key components of this process are accomplished by providing Native Americans with the opportunity to review proposed timber operations and providing an opportunity for the tribes to advise CAL FIRE and RPFs concerning cultural resources that could be impacted during project activities; especially information related to the presence of sites with significant cultural or religious importance to Native Americans that may only be identified through the consultation process.

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To facilitate timely and meaningful notification to tribes and to allow for prompt salvage of damaged timber, the Board established specific rules for notification of operations conducted under Emergency Notices covering three acres or more in size. Under the provisions of these rules, RPFs are required to include a Confidential Archaeological Letter (CAL) to accompany an Emergency Notice submitted to the Director. At a minimum, the CAL must include:

- Archaeological Records Check information, (ref. 14 CCR §§ 929.1, 949.1, and 969.1(c)(2))
- A description of archaeological survey methods and procedures used during the archaeological survey of the area covered by the Emergency Notice, (ref. 14 CCR §§ 929.1, 949.1, and 969.1(c)(7))
- A list and description of all archaeological or historical sites identified within the area covered by the Emergency Notice, (ref. 14 CCR §§ 929.1, 949.1, and 969.1(c)(8))
- An Archaeological Coverage map or maps prepared in accordance with the specifications listed in the definition for such a map (ref. 14 CCR §§ 895.1, 929.1, 949.1, and 969.1(c)(9))
- A preliminary determination of significance if damaging effects to any site cannot be avoided, (ref. 14 CCR §§ 929.1, 949.1, and 969.1(c)(10))
- A description of specific enforceable protection measures, both within the site boundaries and within 100 feet of the site boundaries (ref. 14 CCR §§ 929.1, 949.1, and 969.1(c)(11)), and
- Site Records for all sites determined to be significant or those for which no determination of significance has been made. (ref. 14 CCR §§ 929.1, 949.1, and 969.1(c)(11))

Part of the confusion on the part of Native American contacts who are receiving information regarding proposed operations under Emergency Notices is that they are not always receiving a copy of the Confidential Archaeological Letter as part of the Emergency Notice. As specified in 14 CCR § 1052 (a)(10), the Emergency Notice includes a copy of the Confidential Archeological Letter. As such, RPFs are advised that when providing a copy of the Emergency Notice to the appropriate tribal contact, a copy of the Confidential Archaeological Letter, with the information listed above, must be included in order to comply with the rules.

Also, as noted in the introductory paragraph, timely notification is also very important. CAL FIRE recognizes the importance of beginning timely salvage operations. Notwithstanding this objective, RPFs are encouraged to provide as much lead time as possible to the appropriate Native American contact(s) prior to submittal of an Emergency Notice to CAL FIRE. This is particularly important for areas that have not been previously evaluated under a Timber Harvesting Plan. RPFs are encouraged to mail the notice to Native Americans at the earliest opportunity. Preferably this would be as soon as the field survey

and records check have been completed and all the required information has been collected. In the transmittal letter, it would be helpful to explain that the notice pertains to Emergency Notice timber operations and that timber operations may commence within five days of receipt of the Emergency Notice by CAL FIRE. It would also be helpful to provide information regarding who they should contact if they are aware of additional cultural resources that may require protection. Additionally, CAL FIRE, as appropriate, will be taking steps as part of its Emergency Response on large incidents to advise Native American contacts that timber salvage operations are anticipated.

CAL FIRE appreciates your review and careful consideration of this correspondence, and anticipates your continued compliance with the Forest Practice Rules for Emergency Notices. With improved rule compliance and incorporation of CAL FIRE's additional suggestions for communication with Native Americans, I believe the identified issues can be effectively addressed through an administrative process.

Feel free to contact Linda Pollack or Richard Jenkins, CAL FIRE's Senior State Archaeologists assigned to address this concern, if you have any questions. Linda can be reached at (559) 243-4119 or via email at [Linda.Pollack@fire.ca.gov](mailto:Linda.Pollack@fire.ca.gov) and Richard can be reached at (530) 224-4749 or via email at [Rich.Jenkins@fire.ca.gov](mailto:Rich.Jenkins@fire.ca.gov).

cc: Larry Myers, Native American Heritage Commission  
Harriet Rhoades, Native American Advisory Committee  
George Gentry, Board of Forestry and Fire Protection